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ASSIGNEE OF VINAMEX SUPERMARKET
BANKRUPTCY CLAIMS LLC

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION**

In re:

VINAMEX SUPERMARKET, LLC,

Debtor.

Case No. 8:15-bk-13189-MW

Chapter 11

Adv. No.

ASSIGNEE OF VINAMEX
SUPERMARKET
BANKRUPTCY CLAIMS LLC,

Plaintiff,

**COMPLAINT FOR: BREACH OF
FIDUCIARY DUTY; BREACH OF
CONTRACT; CONVERSION;
AVOIDANCE AND RECOVERY OF
FRAUDULENT TRANSFERS; MONEY
HAD AND RECEIVED; AND TURNOVER.**

vs.

JURY TRIAL DEMANDED

A&J CAPITAL INVESTMENT, INC., a
California corporation, PAN-ASIA
BUSINESS CONSULTING LTD., a
foreign company, RICHARD CHHOR, an
individual, PETER NGUYEN, an
individual, and DOES 1-10;

[11 U.S.C. §§ 542, 544, 548, and 550]

Defendants.

Judge: Hon. Mark S. Wallace
Place: Courtroom 6C
411 West Fourth Street
Santa Ana, CA 92701-4593

Plaintiff Assignee of Vinamex Supermarket Bankruptcy Claims, LLC (the “Vinamex Assignee”), for its claims against defendants A&J Capital Investment, Inc., Pan-Asia Business Consulting Ltd., Richard Chhor and Peter Nguyen avers as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334(b) and (e) in that this is a civil proceeding arising in or related to a case under Title 11 of the United States Code (the “Bankruptcy Code”). This is a core proceeding pursuant to 28 U.S.C. §157(b) and (c):

- a. All of the claims in this Complaint are related to the Chapter 11 case of *In re Vinamex Supermarket, LLC*, pending as Case No. 8:15-bk-13189-MW (the “Bankruptcy Case”) in the Court, and are, therefore, within the Court’s original jurisdiction under 28 U.S.C. §1334(b).
- b. Some of the claims in this Complaint address property of the Debtor’s estate that is the subject of avoidance claims and property of the estate administered in the Bankruptcy Case and, hence, such claims are within the Bankruptcy Court’s exclusive jurisdiction under 28 U.S.C. §§1334(e) and 157(b).
- c. The claims in this Complaint arise under 11 U.S.C. §§ 542, 544, 548, and 550 and applicable California state law.
- d. The claims in this Complaint that arise under 11 U.S.C. §§ 542, 544, 548, and 550 are core proceedings within the meaning of 28 U.S.C. §157(b)(2) because such claims arise under Title 11 of the United States Code.
- e. Some of the claims in this Complaint arise under California state law, and, hence, are non-core claims within the meaning of 28 U.S.C. §157(c)(1); such claims arise under the same nucleus of operative facts that are set forth in the core claims.
- f. Plaintiff does not consent to the Bankruptcy Court’s entry of a final judgment in this case and requests a trial by jury of all issues that are triable to a jury in this case by the District Court.

2. This adversary proceeding is brought pursuant to Rule 7001, *et seq.*, of the Federal Rules of Bankruptcy Procedure.

3. Venue in this Court is proper pursuant to 28 U.S.C. §1409 as this adversary proceeding arises in and relates to a case under the Bankruptcy Code that is pending in this District.

THE PARTIES

4. Plaintiff Assignee of Vinamex Supermarket Bankruptcy Claims, LLC (the “ Vinamex Assignee” or “Plaintiff”) is a limited liability company organized under the laws of the State of California. Plaintiff, at all times relevant hereto, maintained its principal place of business in Los Angeles, California, California. Plaintiff has standing to bring the claims asserted in this Complaint as a result of the following events.

- a. In the Third Amended Plan dated April 4, 2016, the Debtor and Debtor in Possession Vinamex Supermarket, LLC (“Debtor”) stated that it intended to sell all its litigation claims except those defined to be the “Carved Out Claims.”
- b. On or about June 14, 2016, the Debtor entered into a Purchase and Sale Agreement (the “Vinamex PSA”) with Rosa Duong (“Duong”) through which, subject to the confirmation by the Court, Debtor sold, and Duong purchased, all litigation claims of Debtor except those claims defined as the “Carved Out Claims.” The Vinamex PSA required Duong to pay \$50,000 for the sold litigation claims (the “Sold Litigation Claims”).
- c. On June 27, 2016, the Court entered an order that, among other things, confirmed Debtor’s Third Plan dated April 4, 2016, as Amended, as modified by the modifications in the Debtor’s Notice of Non-Material Modifications to Debtor’s Third Amended Plan Dated April 4, 2016 as Amended (the “Non-Material Modifications”).
- d. On August 24, 2017, the Liquidating Trustee was paid \$50,000 for the Sold Litigation Claims.
- e. On or about October 4, 2016, Duong entered into an Assignment Agreement with the Assignee of Vinamex Bankruptcy Claims, LLC (“Assignee of Vinamex”) through which Duong assigned to the Assignee of Vinamex all the rights obligations and duties under the Vinamex PSA.

5. Defendant A&J Capital Investment, Inc. (“A&J Capital”) is a corporation organized and existing under the laws of the State of California. A&J Capital’s registered office is located at 1609 W. Valley Boulevard, Suite 328, Alhambra, California.

6. Defendant Pan-Asia Business Consulting Ltd. (“Pan-Asia”) is a company organized under the laws of the Hong Kong Special Administrative Region. Pan-Asia is qualified to do business in the State of California. On March 26, 2014, Pan-Asia entered into a Management Agreement with Vinamex Supermarket, LLC (“Vinamex”) through which the parties agreed that disputes related to the agreement would be resolved in the County of Los Angeles, State of California.

7. Defendant Richard Chhor is an individual who resides in the County of Los Angeles, State of California.

8. Defendant Peter Nguyen is an individual who resides in the County of Los Angeles, State of California.

9. Plaintiff is informed and believes, and therefore alleges, that Does 1 through 10 (collectively referred to as the “Doe Defendants”), are or were affiliated with A&J Capital, Pan-Asia, Chhor or Nguyen, or are in some manner responsible or legally liable for the events, actions, transactions, and circumstances alleged herein. Plaintiff will seek leave of the Court to amend this Complaint after discovery to state the true names and capacities of these entities or any other Doe Defendants.

THE FACTS

Introduction

10. This lawsuit is the result of the flagrant breaches of contract and fiduciary duties by two classes of managers of Vinamex Supermarket, LLC (“Vinamex”), a company formed to build and operate a supermarket and other retail space in Garden Grove, California. During construction of the supermarket, Class A Managers Chhor and Nguyen and Class B Managers A&J Capital and Pan-Asia each owed Vinamex fiduciary duties of care, good faith and utmost loyalty. Consistent with those duties, Chhor and Nguyen had the responsibility to act in good faith, in a manner in which each Defendant reasonably believed was in the best interest of Vinamex and its members, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under

1 similar circumstances. Rather than properly discharging their fiduciary and other duties in good faith,
2 Chhor and Nguyen, instead, engaged in series of acts and omissions, including but not limited: (a)
3 mismanaging the construction of the supermarket resulting in significant construction cost overruns;
4 (b) misappropriating Vinamex funds earmarked to cover the cost of construction for their own
5 personal use; (c) engaging in self-dealing transactions, including but not limited to establishing
6 business enterprises to enter into lease arrangements with Vinamex in violation of Vinamex's
7 operating agreement; and (d) using Vinamex funds to purchase equipment and material for the
8 unlawful business enterprises.

9 11. A&J Capital and Pan-Asia owed Vinamex and its members the same duties as Chhor
10 and Nguyen. In addition, A&J Capital and Pan-Asia had the responsibility: (a) to manage and monitor
11 the operations of the business, property and affairs of Vinamex, including the construction of the
12 supermarket; (b) to monitor the disbursement of funds from the bank accounts of Vinamex; (c) to
13 review and approve budgets; and (d) to train and manage their personnel to properly discharge the
14 responsibilities of A&J Capital and Pan-Asia.

15 12. Rather than properly discharging their fiduciary and other duties in good faith, A&J
16 Capital and Pan-Asia, among other things: (i) failed to exercise adequate management and oversight
17 over the use of funds from Vinamex's bank accounts; (ii) closed a blind eye to their duty to exercise
18 adequate management and oversight control over the construction of the supermarket by, among other
19 things, ensuring that construction of the supermarket was within the budget for construction, that the
20 funds spent were being used for the supermarket, and that the contractors were properly licensed; and
21 (iii) failed to exercise adequate management and oversight control over the activities of Chhor and
22 Nguyen, including but not limited to their use of funds from Vinamex's bank accounts; (iv) failed to
23 train their employees on how to follow the policies and procedures required in writing to ensure that
24 funds earmarked for construction were being used only for construction, resulting in at least one
25 employee signing blank dual signature checks without a clue as to the amount or use of funds taken
26 from Vinamex's bank accounts through the dual signature checks.

27 13. As a direct result of the tortious conduct of the A&J Capital, Pan-Asia, Chhor and
28 Nguyen during construction, funds earmarked to be use for the start-up operations of the supermarket

1 were consumed during construction resulting in the supermarket shutting its doors within five months
2 of opening and Vinamex filing for bankruptcy protection. This lawsuit is brought to hold these Class
3 A and Class B Managers accountable for their tortious conduct resulting in the failure of what
4 otherwise was a supermarket slated to serve the unique needs of the Vietnamese and Mexican
5 community in Garden Grove, California.

6 **The Formation, Funding And Management Structure Of Vinamex**

7 14. By way of background, Vinamex was formed in April 2013 by Chhor, Nguyen and
8 Rosa Duong (“Duong”) to develop, own and operate an Asian and Mexican supermarket and to lease
9 other retail space in Garden Grove, California. In June 2013, Duong, Chhor and Nguyen (collectively
10 the “Original Partners”) entered into a partnership agreement regarding the ownership, funding,
11 construction and management of Vinamex. On September 27, 2013, the Original Partners caused
12 Vinamex to enter into a lease to operate the Garden Grove Supermarket and to sublease space to other
13 retail stores at 12081 Brookhurst Street, Garden Grove, California. The lease term commenced on
14 December 1, 2013.

15 15. Chhor knew Qingfu “Frank” Xu (“Xu”) before becoming an Original Partner. Shortly
16 after the Original Partners entered the partnership agreement, Chhor introduced Duong and Nguyen to
17 Xu for purposes of discussing obtaining EB-5 Program funding to be used to build the Supermarket
18 and other retail space, purchase the initial inventory for, and provide the initial working capital for the
19 operations of the Supermarket (the “Project”).

20 16. The EB-5 Immigrant Investor Program (the “Program”) was created by the
21 Immigration Act of 1990 to stimulate the U.S. economy through job creation and capital investment
22 by foreign investors. Under the Program, entrepreneurs (and their spouses and unmarried children
23 under 21) are eligible to apply for green card (permanent residence) if they: (a) make the necessary
24 capital investment in a commercial enterprise in the United States; and (b) the enterprise contemplates
25 creating or preserving 10 permanent full-time jobs for qualified U.S. workers.

26 17. Xu was familiar with Sino-US Investment and Management Consulting Limited
27 (“Sino-US Investment”) before June 25, 2013. On June 25, 2013, Sino-US Investment issued a letter
28 of intent (the “LOI”) that, among other things, described the Project, the funding of the Project, and

the management of the Project. The LOI generally describes the Project as an opportunity to invest in an Asian and Mexican supermarket, including: (a) a 31,200 sq. ft. first floor space to house the Supermarket and other retail stores; (b) a 9,500 sq. ft. second floor space to house retail stores; (c) interior design and buildout of the facility; and (d) operations of the Supermarket.

18. The LOI generally describes the funding of the Project to call for Sino-US Investment to bring in up to \$3.5 million investor funding and for the Original Partners to show the ability to commit \$1.5 million to the Project. And the LOI generally describes the management of the Project to require Sino-US Investment to appoint an investment manager to: (a) manage the disbursement of EB-5 funds; and (b) exercise the rights of the preferred equity members as described in the operating agreement of Vinamex. One Yu Liangying signed the LOI on behalf of Sino-US Investment. Duong and Chhor signed the LOI on behalf of Vinamex.

19. For its funding raising efforts, Sino-US Investment (or its designee) was entitled to 10% of the net operating profit and 10% equity in Vinamex under the LOI. In addition, Sino-US Investment (or its designee) was entitled to a non-refundable origination fee of 1% of the EB-5 equity brought in. Sino-US Investment (or its designee) also was entitled to require Vinamex to cover the legal fees and related costs incurred to prepare and review the legal documents needed to effectuate the EB-5 transaction. But that is not all to which Sino-US Investment was entitled under the transaction. Under the LOI, each investor was required to pay Sino-US Investment \$45,000 for services performed overseas.

The Management Structure Of Vinamex And The Obligations Of The Managers

20. To effectuate the ownership and management structure contemplated by the LOI, Xu caused a law firm to prepare a First Amended and Restated Operating Agreement for Vinamex dated as of June 7, 2013 but entered on January 10, 2014 (the "Operating Agreement"). The Operating Agreement superseded the partnership agreement previously entered by the Original Partners.

21. The Operating Agreement provided for Class A Members and Class B Members. The Class A Members consisted of the Original Partners and Goldstone Management, LLC ("Goldstone"). Xu is the sole member and manager of Goldstone. The Class B Members consisted of the Chinese nationals who sought to obtain lawful permanent residency status through their EB-5 investment.

22. The Operating Agreement provided that Vinamex was to have two managers: a Class A Manager and a Class B Manager. The Operating Agreement designated Vinamex Management, LLC (“Vinamex Management”) as the Class A Manager. Vinamex Management was co-owned by Chhor, Nguyen, Rosa Duong and Pier Duong. The Operating Agreement provided that the Class B Manager would be designated at a future date.

23. The Operating Agreement prohibits a Manager (and the Manager’s affiliates, employees or agents) from directly or indirectly engaging in any transaction (including borrowing money from, or entering into a lease arrangement with Vinamex) unless: (a) the material terms and conditions of the transaction are disclosed to and approved by each class of Members; and (b) the transaction is not expressly prohibited by the Operating Agreement. The Operating Agreement provided that each Manager owes Vinamex and Vinamex’s members “the fiduciary duties of loyalty and care, and is bound by the covenants of good faith and fair dealing.”

24. On March 26, 2014, Vinamex and Pan-Asia entered into a Management Agreement through which Pan-Asia: (a) agreed to be designated as the Class B Manager under the Operating Agreement; and (b) separately agreed “to provide financial administrative and certain advisory services to [Vinamex].” The administrative and advisory services that Pan-Asia agreed to provide Vinamex included but were not limited: (a) to “manage and monitor the operation of the business, property, and affairs of [Vinamex] in accordance with the Operating Agreement”; (b) to “monitor the disbursement of funds from [Vinamex’s] bank accounts”; (c) to review and approve budgets; and (d) to “train and manage [Pan-Asia’s] employees with regard to, and enforce, the rules and policies, as defined in the [Management] Agreement.”

25. For its management services, the Management Agreement entitled the Class B Manager “to compensation based upon the amount equal to \$88,800 per year payable on a monthly basis....” And, the Management Agreement required the Class B Manager to “indemnify, defend and hold harmless [Vinamex] against and from any and all claims, damages, liabilities, causes of action and/or proceedings ... brought against, suffered or incurred by [Vinamex] which arise out of, relate to or result from Class B Manager’s gross negligence; reckless, willful or intentional misconduct; fraud; deceit; bad faith....”

26. The Management Agreement authorized Pan-Asia to “delegate its functions, powers, discretions, privileges and duties under the Agreement or the Operating Agreement to any person including any of its affiliates...” On April 21, 2014, Pan-Asia entered into an agency agreement (the “Agency Agreement”) through which it irrevocably delegated to A&J Capital Investment, Inc. (“A&J Capital”) the “power to exercise and assume certain of the rights, powers, authority, and obligations of the Class B Manager under the Operating Agreement. Xu is the sole shareholder and the President and Chief Executive Officer of A&J Capital.

27. The Agency Agreement required Pan-Asia to pay A&J Capital a consulting fee of \$88,000 per annum payable monthly upon Pan-Asia’s receipt of its compensation under the Management Agreement from Vinamex. Under the Operating Agreement, Pan-Asia remained responsible for any act or omission of such officer or employee or agent to which it delegated its rights and obligations.

A&J, Chhor And Nguyen Disregarded the Aggregate Accounts Governance Agreement

28. As of April 23, 2014, Vinamex Management was the Class A Manager of Vinamex. As of April 23, 2014, A&J Capital was the Class B Manager of Vinamex. As permitted by the Operating Agreement, Vinamex Management delegated its management authority to Chhor and Nguyen. A&J Capital selected Ming Yu (“Yu”) as the point-person for the Class B Manager.

29. On April 23, 2014, the Class A and Class B Managers entered into an agreement describing the purpose and control over three bank accounts opened by Vinamex – the Cash Control Account (ending with 2306), the Revenue and Build-Out Operating Account (“Revenue Account”) (ending with 2314) and the General Expense Operating Account (ending with 2264) (collectively, the “Aggregate Accounts Governance Agreement”).

30. Specifically, the Aggregate Accounts Governance Agreement confirmed the opening of a Cash Control Account initially to be used to deposit EB-5 funds by the Class B Member. Once all EB-5 funds were deposited, the Cash Control Account was to be used to hold funds for, among other things, capital improvements and member compensation.

31. The Aggregate Accounts Governance Agreement also confirmed the opening of a Revenue Account initially to be used to receive funds from the Cash Control Account to pay

1 construction costs of the supermarket and retail space. Once construction was completed, the Revenue
2 Account was to be used to deposit all revenue generated by Vinamex.

3 32. And the Aggregate Accounts Governance Agreement confirmed the opening of a
4 General Expense Operating Account to receive funds from the Revenue Account and to use those
5 funds to pay company operating expenses.

6 33. The Aggregate Accounts Governance Agreement required one signature from the
7 Class A Manager and one signature from the Class B Manager on each check or other withdrawal
8 from the Cash Control Account and the Revenue Account. This dual signature requirement was
9 included in the Aggregate Accounts Governance Agreement to serve as a means for the Class B
10 Managers to monitor the expenditure of funds from both accounts by the Class A Manager. The Class
11 B Manager also had online access to both accounts 24/7.

12 34. Between May 1, 2014 and December 31, 2014, approximately \$3,808,964.00 was
13 deposited into the Cash Control Account by the EB-5 investors. A&J, Chhor and Nguyen approved
14 the wire transfer of approximately \$308,000 to Sino-US Investment directly from the Cash Control
15 Account. A&J, Chhor and Nguyen further approved the transfer of the remaining \$3.5 million to the
16 Revenue and Buildout Account, wiping out the Cash Control Account by February 2015.

17 35. As noted previously, the business plan called for construction of the supermarket area
18 as well as retail space on the first and second floors. The business plan called for Vinamex to sublease
19 the retail space to subtenants. EB-5 funds and money contributed by the Class A Members were to be
20 used to cover these construction costs, to purchase of supermarket equipment and inventory, and to
21 cover start-up operating expenses.

22 36. As noted previously, the Operating Agreement prohibited a Manager (and the
23 Manager's affiliates, employees or agents) from directly or indirectly engaging in any transaction
24 (including borrowing money from, or entering into a lease arrangement with Vinamex) unless: (a) the
25 material terms and conditions of the transaction were disclosed to and approved by each class of
26 Members; and (b) the transaction is not expressly prohibited by the Operating Agreement.

Nguyen Rigged the Bidding Process to Select the General Contractor

37. Nguyen managed the bidding process for the architecture and construction services necessary to design and build the supermarket. Nguyen knew Ronny Luong, of ABC Art Builder Construction (“ABC Construction”). Nguyen had introduced and recommended ABC Construction to Duong. Nguyen advised the Original Partners that ABC Construction had won the bid to be the general contractor to build the supermarket and retail space. Nguyen managed the construction on behalf of the Class A Manager. Nguyen acknowledges that, during construction, he would often arrive at the supermarket site at 10am and leave between 4pm and 7pm. In his own words, Nguyen was regularly at the Project site because, “as the owner, you have to be there to see what construction is going on.”

38. To obtain payment for construction costs incurred, ABC Construction purportedly submitted draw requests to Chhor. Chhor then contacted the Class B Manager to arrange for the transfer of EB-5 funds to pay construction costs triggered by draw requests.

39. These draw requests included budgets showing how the money was spent, copies of lien releases from the contractor, and copies of checks written to the subcontractors.

A&J Capital Pays Lip Service To Its Monitor Obligations, Thereby Permitting The Fraud of Chhor and Nguyen To Go Undetected Until It Was Too Late

40. A&J Capital advertises itself as a leading commercial real estate and private equity investment management firm headquartered in Los Angeles. A&J Capital boasts about managing the development of commercial properties, including at least one development consisting of a grocery store, restaurants and small retail stores.

41. As noted previously, A&J Capital signed an Agency Agreement with Pan-Asia through which A&J Capital agreed to provide Vinamex various services, including but not limited: (a) to “manage and monitor the operation of the business, property, and affairs of [Vinamex] in accordance with the Operating Agreement”; (b) to “monitor the disbursement of funds from [Vinamex’s] bank accounts”; (c) to review and approve budgets; and (d) to “train and manage [Pan-Asia’s] employees with regard to, and enforce, the rules and policies, as defined in the [Management] Agreement.” Between May and November 2014, A&J Capital arranged for over \$3.8 million in EB-5 funds to be

1 deposited into Vinamex's Cash Control Account. A&J Capital properly approved the payment of
2 over \$300,000 to Sino-US. Beyond that, A&J Capital did little to properly discharge its obligation to
3 manage and monitor the business, property and affairs of Vinamex.

4 42. The LOI required the use of EB-5 funds to be in accordance with an itemized budget.
5 The Agency Agreement required A&J Capital to review and approve budgets in order to safe-guard
6 the use of EB-5 funds. The Bank Accounts Governance Agreement required that funds to be used for
7 the build-out be transferred from the Cash Control Account to the Revenue Account. Before
8 approving the transfer of funds between the two accounts, the Operating Agreement and Agency
9 Agreement required A&J Capital to independently assure itself that the funds would be properly used.

10 43. Between May and November 2014, A&J Capital approved transfers of \$3.5 million
11 from Vinamex's Cash Control Account to Vinamex's Revenue Account based on budgets fabricated
12 by Nguyen and Chhor and rubberstamped by A&J Capital. A&J Capital approved of over \$2.1 million
13 from Vinamex's Revenue Account to ABC Construction's Account at Bank of the West based on
14 draw requests, a number of which were fabricated.

15 44. Once A&J Capital approved the transfer of funds from Vinamex to ABC Construction,
16 Nguyen was free to use the funds in any way he saw fit. And he did so to the detriment of Vinamex.

17 **Chhor and Nguyen Crafted an Elaborate Scheme to Divert Millions of Dollars While A&J**
18 **Capital Blindly Approved Draw Requests**

19 45. In late April 2014, Chhor and Nguyen submitted the First Draw Request to A&J
20 Capital. The First Draw Request was supported by a number of lien releases and copies of checks
21 written to the sub-contractors. The checks showed that the general contractor ABC Art Builder
22 Construction, Inc. had paid at least \$645,000 to C-K Construction from a checking account number
23 027-718379 at Bank of the West. Those checks had been doctored and were never cashed.

24 46. Subpoenaed bank statements from Bank of the West included bank statements of
25 account number 027-718379 (the "8379 Account"). The account holder was not ABC Art Builder
26 Construction, Inc. To the contrary, the account belonged to one Emerald Union International LLC dba
27 Pacific United International ("Emerald Union"). That company's address on the bank statements was
28 4843 Doreen Ave, Temple City CA 91780-4140—Nguyen's home address.

1 47. That fraud was just the beginning. Chhor and Nguyen created fake construction
2 invoices and forged signatures as well. Chhor and Nguyen forged signatures of Ronny Luong, the
3 owner of ABC Art Builder Construction. Chhor and Nguyen forged the signatures of Rosa Duong to
4 show that she approved many of the transactions. Chhor and Nguyen forged the signatures for the
5 owner of C-K Construction.

6 48. The fraud did not stop there. Chhor and Nguyen doctored bank statements of Emerald
7 Union to make them appear as if they belonged to ABC Art Builder Construction, Inc. Chhor and
8 Nguyen also doctored Duong's bank statements to prove that \$930,000 was paid from her bank
9 account to ABC Art Builder Construction.

10 49. Chhor and Nguyen went even further. On June 30, 2014, Nguyen opened a checking
11 account (ending with 5530) at Bank of the West under the name ABC Art Builder Construction (the
12 "ABC Construction Account"). The signature card for the ABC Construction Account reflected a
13 signature above Nguyen's name was nearly identical to Ronny Luong's distinctive signature. Nguyen
14 had the monthly bank statements mailed to his home residence located at 4843 Doreen Avenue,
15 Temple City, CA 91780. Over the course of six months between July 2015 and December 2015,
16 Nguyen spent all \$2.1 million, including many hundreds of thousands of dollars paid to himself and
17 Chhor.

18 50. Their elaborate scheme was designed to pin the tail of fraud on Duong. From the
19 outset, Chhor and Nguyen chose C-K Construction as the phantom contractor because C-K
20 Construction is owned by Duong's relative. Then, after they were being removed as members of
21 Vinamex Supermarket, LLC, Chhor and Nguyen revealed Duong's doctored bank statements to prove
22 that the true culprit was Duong. These doctored bank statements were attached to the Third Amended
23 Disclosure Statement that Court approved.

24 51. To provide cover for the theft of hundreds of thousands of dollars and to show that
25 they were being mindful of the EB-5 funds, Chhor and Nguyen agreed to waive their rights to
26 compensation and instead agreed to take loans from Vinamex of approximately \$3,000 per month to
27 provide them with living money during the course of the construction. The loans began in August
28 2014 and terminated in January 2015. Chhor and Nguyen admit that those funds are owed to

1 Vinamex. According to the Statement of Financial Affairs (“SOFA”) [Docket No. 68], Chhor and
2 Nguyen each owe at least \$15,000 plus interest to pay back these loans.

3 52. In addition to the many secret payments Chhor and Nguyen received from the ABC
4 Account at Bank of the West, Chhor used his authority as a co-signer on the Revenue Account to give
5 himself and Nguyen tens of thousands of additional dollars. For example, Chhor and A&J Capital
6 approved Check No. 1053 from the Revenue Account in the amount of \$30,000 payable to Peter
7 Nguyen, for “the purchase of smallware.” No receipts have been found to document what
8 “smallware” was purchased for the benefit of Vinamex.

9 53. A&J Capital turned a blind eye to how the funds were being spent and the quality of
10 the construction. If A&J Capital made site visits to fulfill their many responsibilities under the
11 Agency Agreement and as Class B manager, they would have immediately realized that Chhor and
12 Nguyen were not being truthful.

13 **Nguyen Uses Diverted EB-5 Funds To Start Businesses To Operate In Vinamex’s Retail Space**

14 54. Chhor concedes that, in December 2014, he learned that Nguyen was part owner in
15 several businesses purporting to sublease retail space from Vinamex. The Operating Agreement
16 required Nguyen to get pre-approval from each class of Managers of Vinamex before taking an
17 ownership interest in these businesses. But Nguyen neither sought nor obtained pre-approval to do so.
18 Apparently Nguyen admitted to Chhor that EB-5 funds deposited into the ABC Construction Account
19 were used to do build-outs for these businesses and to purchase equipment and small-ware needed to
20 open and operate the businesses.

21 **Chhor And Nguyen Form Cutie Burger, LLC In December 2014 And Divert Funds From**
22 **Vinamex To Open The Restaurant.**

23 55. Chhor concedes that, after he discovered Nguyen’s ownership interest in certain
24 subtenants, he and Nguyen formed Cutie Burger, LLC (“Cutie Burger”) to be a subtenant of Vinamex
25 and to operate a burger restaurant in the retail space. The Operating Agreement required Chhor and
26 Nguyen to get pre-approval from each class of Managers of Vinamex before engaging in this
27 transaction. But Chhor and Nguyen neither sought nor obtained pre-approval to cause Cutie Burger to
28 engage in this transaction with Vinamex.

1 56. Chhor and/or Nguyen opened a bank account for Cutie Burger and caused funds from a
2 Vinamex account to be transferred to Cutie Burger's Bank of America account. Chhor and/or Nguyen
3 used the misappropriated funds, among other things, to renovate space to operate Cutie Burger in the
4 small business retail space at the Garden Grove Supermarket and to buy equipment, small-ware and
5 food for the restaurant.

6 **Nguyen Misappropriates Deposits From Prospective Tenants.**

7 57. Construction began in or about January 2014. Chhor concedes that, during
8 construction, prospective subtenants approached Nguyen and him to inquire about renting retail space.
9 According to Chhor, An Ky BBQ deposited \$150,000 with Nguyen. A prospective tenant seeking to
10 open a sandwich shop deposited \$100,000 with Nguyen. Chhor acknowledges that those deposits
11 never made their way to a Vinamex account. But Chhor admits that Nguyen used Vinamex funds to
12 pay the subtenants' construction costs, equipment costs and other costs required to get the subtenants'
13 businesses up and running. Chhor admits that the construction cost overruns were the result of
14 Nguyen causing Vinamex to foot the bill for construction not contemplated by the business plan.

15 **Chhor And Nguyen Open Up Bank Accounts And Cause Funds Belonging To Vinamex To Be**
16 **Held In The Accounts.**

17 58. As noted previously, the Aggregate Accounts Governance Agreement prohibited the
18 Class A Members and Managers from opening new bank accounts in the name of Vinamex without
19 the knowledge and approval of the Class B Manager. Despite this prohibition, Chhor and/or Nguyen
20 opened up an account at Bank of America ("BofA") to deposit rent payments made by the subtenants.
21 Chhor and/or Nguyen did this despite the fact that the Revenue Account was opened in part to collect
22 any and all revenue generated by Vinamex. In addition, Chhor opened up a merchant account at BofA
23 in his own name (instead of in the name of Vinamex) to handle point of sale transactions. For obvious
24 reasons, Chhor never linked the merchant account to the Revenue Account so that funds could be
25 transferred from the BofA merchant account to the Revenue Account. A&J Capital, the Class B
26 Manager, had online access to the Revenue Account. Had Chhor linked the BofA merchant account to
27 the Revenue Account, A&J Capital likely would have discovered the existence of the merchant
28 account.

Chhor And Nguyen Are Removed As Members Of Vinamex And As Day To Day Managers

59. In or about January 2015, Duong learned that Chhor and Nguyen had not made their capital contributions to Vinamex, and had reason to believe that Chhor and Nguyen had mismanaged the construction of the supermarket and had embezzled money from Vinamex. On February 6, 2015, Duong noticed a special meeting of the members of Vinamex for the purpose of removing Chhor and Nguyen: (a) as Class A Members due to their failure to make their capital contributions; and (b) as day to day managers of the supermarket due to their malfeasance. The meeting was held on February 10 and 12, 2015. Chhor and Nguyen were removed as members and day to day operators of the supermarket. After receiving the February 6 notice but before the February 10 meeting, Chhor feared the obvious: that is that he would soon be removed from the day to day operation of Vinamex and be blocked from accessing Vinamex funds. So, he wrote a check to himself for \$250,000. On February 6, 2015 (the date notice of the special meeting was given), Vinamex advised East West Bank that funds in Vinamex's accounts should be frozen until further notice. Had Vinamex not taken the precautionary measure, Chhor no doubt would have completed his scheme to misappropriate an additional \$250,000 from Vinamex.

60. On February 15, 2015, Vinamex made written demand on Chhor and Nguyen to return all property of Vinamex, including bank accounts, to Vinamex. Despite this demand, Chhor and Nguyen failed to make arrangements for control of Vinamex's merchant account to be transferred to Duong and A&J Capital. Nor did they return EB-5 funds they misappropriated from Vinamex.

A&J Capital Gave Free Reign Over the Revenue and Buildout Account to Chhor

61. As noted previously, the Bank Accounts Governance Agreement required dual signatures from the Class A and Class B Managers in order to control the use of funds from the Cash Control Account and the Revenue Account. A&J Capital assigned Ming Yu ("Yu") to represent the Class B Manager. According to Chhor, Yu discharged A&J Capital's duties to co-sign checks under the Operating Agreement, the Management Agreement and the Agency Agreement in the following fashion. Chhor would bring 10 to 20 "blank checks" to Yu in Alhambra, Yu would sign the blank checks and Chhor would take the blank checks signed by Yu back to Garden Groves. When Chhor needed to use a check, he then would fill out the check and add his signature (the Class A Member

signature) to the check. According to Chhor, Yu never questioned this practice or expressed concerns about the use of funds from the checks.

62. Yu also had online access to the Cash Control Account and the Revenue Account. He also had the authority to examine Vinamex's books and records at any time. Yet, he apparently failed to monitor the disbursement of funds despite the fact that he had the ability to do so through his online access and/or an examination of Vinamex's books and records.

63. As a result of A&J Capital's failure to properly discharge its fiduciary and contractual duties, the misconduct of Chhor and Nguyen went unchecked until in or about February 2015, resulted in the misuse of hundreds of thousands of Vinamex dollars and ultimately left Vinamex with insufficient start-up funds to operate the supermarket. And, under the Management Agreement, Pan-Asia is liable for the malfeasance of its assignee – here, A&J Capital.

64. Accordingly, by this lawsuit, the Vinamex Assignee seeks redress against defendants for compensatory damages, including loss profits, in an amount subject to proof at trial but is alleged to exceed \$5,000,000, punitive damages where appropriate and warranted and reimbursement of costs herein.

FIRST CLAIM FOR RELIEF

(For Breach of Operating Agreement Against Defendants Chhor and Nguyen)

65. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

66. On or about January 14, 2014, Chhor and Nguyen entered into the Operating Agreement with other members of Vinamex.

67. Vinamex has performed all of the conditions, covenants, and promises under the Operating Agreement that it was required to perform, except for any parts that it was excused from performing as a result of conduct of Chhor, Nguyen and others.

68. Chhor and Nguyen breached the Operating Agreement by, among other things, engaging in the conduct set forth.

69. As a direct and proximate result of the actions of Chhor and Nguyen, Plaintiff has been damaged in an amount that is uncertain but is alleged to exceed \$5,000,000 (excluding interest).

SECOND CLAIM FOR RELIEF

(For Breach of Fiduciary Duty Against Defendants Chhor and Nguyen)

70. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

71. The Operating Agreement expressly placed fiduciary duties of care and loyalty on Chhor and Nguyen. As managers of Vinamex, Chhor and Nguyen owed Vinamex common law duties of care and loyalty.

72. Chhor and Nguyen breached the Operating Agreement by, among other things, engaging in the conduct set forth above.

73. As a direct and proximate result of the actions of Chhor and Nguyen, Plaintiff has been damaged in an amount that is uncertain but is alleged to exceed \$5,000,000 (excluding interest).

74. Chhor and Nguyen engaged in oppression, fraud or malice, and an award of punitive damages against them is therefore appropriate

THIRD CLAIM FOR RELIEF

(For Conversion Against Defendants Chhor and Nguyen)

75. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

76. Chhor and Nguyen had a right of access to the Cash Control Account and Revenue and Build-Out Operating Account in which EB-5 funds were to be deposited.

77. Chhor and Nguyen caused EB-5 funds that were to be moved from the Cash Control Account to the Revenue Build-Out Operating Account to be diverted into an account in the name of ABC Construction but controlled by Nguyen. Once in the ABC Construction Account, Chhor and Nguyen then converted the funds for their own use instead of for the use of Vinamex.

78. In addition, Chhor and Nguyen took deposits from prospective tenants of the retail space. However, rather than depositing tenant deposits into the Revenue Build-Out Operating Account as required by the Aggregate Accounts Governance Agreement, Chhor and Nguyen deposited the deposits into an account or accounts controlled by them.

79. Vinamex did not consent to the actions of Chhor and Nguyen. Indeed, Vinamex has demand that Chhor and Nguyen return the funds to Vinamex. However, to date, Chhor and Nguyen have failed and refused to return said funds.

80. As a direct and proximate result of the actions of Chhor and Nguyen, Plaintiff has been damaged in the amount that is uncertain but is alleged to exceed \$500,000 (excluding interest).

81. Chhor and Nguyen engaged in oppression, fraud or malice, and an award of punitive damages against them is therefore appropriate.

FOURTH CLAIM FOR RELIEF

(For Recovery Of Improper Use Of Funds Under Bankruptcy Code Sections 544 and 548 and California Law Against Defendants Chhor and Nguyen)

82. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

83. Vinamex did not receive adequate consideration for: (a) loans Chhor and Nguyen caused Vinamex to make to them; and (b) funds belonging to Vinamex that Chhor and Nguyen misappropriated for their own personal use.

84. On the dates that Chhor and Nguyen caused Vinamex to make these payments, Vinamex's remaining capital and assets were unreasonably small for its business and/or Chhor and Nguyen knew, or should have known, that Vinamex would incur debts beyond its ability to pay as they matured.

85. Chhor and Nguyen caused Vinamex to make these loans and/or to otherwise make payments to Chhor and Nguyen with the intent to hinder, delay and defraud creditors.

86. These payments were constructively fraudulent under 11 U.S.C. Section 548 in that, among other things, Vinamex made the payments and transfers for the benefit of insiders (Chhor and Nguyen) or incurred such obligations to or for the benefit of insiders (Chhor and Nguyen), and not in the ordinary course of business.

87. The receipt by Chhor and Nguyen of the improper payments are subject to avoidance and recovery under Bankruptcy Code Section 544 and 548 and the applicable provisions of California

Civil Code Section 3439.01 and 3439.12 concerning fraudulent or otherwise void or voidable obligations, conveyances and transfers.

88. By reason of the foregoing, Plaintiff is entitled to recover the transfers, or the value of such transfers, if the Court so orders, pursuant to 11 U.S.C. Section 550 and applicable state law.

89. Chhor and Nguyen engaged in oppression, fraud or malice, and an award of punitive damages against them is therefore appropriate.

FIFTH CLAIM FOR RELIEF

(For Money Had and Received Against Defendants Chhor and Nguyen)

90. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

91. Prior to February 2015, Chhor and Nguyen had signatory rights on the Cash Control Account and the Revenue and Build-Out Operating Account of Vinamex. EB-5 and other funds were deposited into these accounts. At the time the accounts received the deposits, Chhor and Nguyen had an obligation to use the deposits for the benefit of Vinamex. Chhor and Nguyen were aware of this obligation. Nevertheless, Chhor and Nguyen used a portion of said funds for personal business reasons.

92. As a direct and proximate result of the actions of Chhor and Nguyen, Plaintiff has been damaged in the amount that is uncertain but is alleged to exceed \$500,000 (excluding interest).

SIXTH CLAIM FOR RELIEF

(For Turnover of Property Defendants Chhor and Nguyen – 11 U.S.C. §542)

93. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

94. To the extent Plaintiff is successful in avoiding any transfers to Chhor and Nguyen, the property constitutes property of the estate pursuant to 11 U.S.C. § 541.

95. Plaintiff is informed and believes and based upon such information and belief alleges that Chhor and Nguyen are in possession of funds they received as loans from Vinamex.

96. The funds should be turned over to Plaintiff pursuant to 11 U.S.C. § 542.

SEVENTH CLAIM FOR RELIEF

(For Breach of Operating Agreement Against Defendants A&J Capital and Pan-Asia)

97. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

98. Pan-Asia and Vinamex entered into a Management Agreement effective as of March 26th, 2014, pursuant to which Pan-Asia: (a) agreed to be designated as the Class B Manager under the Operating Agreement; and (b) separately agreed “to provide financial administrative and certain advisory services to [Vinamex].” The administrative and advisory services that Pan-Asia agreed to provide Vinamex included but were not limited: (a) to “manage and monitor the operation of the business, property, and affairs of [Vinamex] in accordance with the Operating Agreement”; (b) to “monitor the disbursement of funds from [Vinamex’s] bank accounts”; (c) to review and approve budgets ; and (d) to “train and manage [Pan-Asia’s] employees with regard to, and enforce, the rules and policies, as defined in the [Management] Agreement.” The Management Agreement authorized Pan-Asia to “delegate its functions, powers, discretions, privileges and duties under the Agreement or the Operating Agreement to any person including any of its affiliates...” However, Pan-Asia remained responsible for any act or omission of such officer or employee or agent to which it delegated its rights and obligations.

99. On April 21, 2014, A&J Capital and Pan-Asia signed an Agency Agreement with Pan-Asia through which A&J Capital agreed to provide Vinamex various services, including but not limited: (a) to “manage and monitor the operation of the business, property, and affairs of [Vinamex] in accordance with the Operating Agreement”; (b) to “monitor the disbursement of funds from [Vinamex’s] bank accounts”; (c) to review and approve budgets; and (d) to “train and manage [Pan-Asia’s] employees with regard to, and enforce, the rules and policies, as defined in the [Management] Agreement.”

100. Vinamex has performed all of the conditions, covenants, and promises under the Operating Agreement that it was required to perform, except for any parts that it was excused from performing as a result of conduct of A&J Capital and Pan-Asia.

101. A&J Capital and Pan-Asia breached the Operating Agreement by, among other things, engaging in the conduct set forth.

102. As a direct and proximate result of the actions of A&J Capital and Pan-Asia, Plaintiff has been damaged in an amount that is uncertain but is alleged to exceed \$5,000,000 (excluding interest).

EIGHTH CLAIM FOR RELIEF

(For Breach of Fiduciary Duty Against Defendants A&J Capital and Pan-Asia)

103. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

104. The Operating Agreement expressly placed fiduciary duties of care and on the Class B Manager. Pan-Asia and Vinamex entered into the Management Agreement, through which Pan-Asia was designated as the Class B Manager. The Management Agreement permitted Pan-Asia to assign its rights and obligations to a third party. However, through executing the Management Agreement, Pan-Asia agreed to remain liable in the event that it opted to assign its rights and obligations under the Management Agreement. Pan-Asia assigned its rights and obligations under the Management Agreement to A&J Capital.

105. A&J Capital and Pan-Asia breached their fiduciary duties of care to Vinamex by, among other things, engaging in the conduct set forth.

106. As a direct and proximate result of the actions of A&J Capital and Pan-Asia, Plaintiff has been damaged in an amount that is uncertain but is alleged to exceed \$5,000,000 (excluding interest).

NINTH CLAIM FOR RELIEF

(For Breach of Management Agreement Against Defendants A&J Capital and Pan-Asia)

107. Plaintiff incorporates herein by this reference the allegations of paragraphs 1 through 64, inclusive.

108. Pan-Asia and Vinamex entered into a Management Agreement effective as of March 26th, 2014, pursuant to which Pan-Asia: (a) agreed to be designated as the Class B Manager under the Operating Agreement; and (b) separately agreed “to provide financial administrative and certain

1 advisory services to [Vinamex].” The administrative and advisory services that Pan-Asia agreed to
2 provide Vinamex included but were not limited: (a) to “manage and monitor the operation of the
3 business, property, and affairs of [Vinamex] in accordance with the Operating Agreement”; (b) to
4 “monitor the disbursement of funds from [Vinamex’s] bank accounts”; (c) to review and approve
5 budgets; and (d) to “train and manage [Pan-Asia’s] employees with regard to, and enforce, the rules
6 and policies, as defined in the [Management] Agreement.” The Management Agreement authorized
7 Pan-Asia to “delegate its functions, powers, discretions, privileges and duties under the Agreement or
8 the Operating Agreement to any person including any of its affiliates...” However, Pan-Asia
9 remained responsible for any act or omission of such officer or employee or agent to which it
10 delegated its rights and obligations.

11 109. On April 21, 2014, A&J Capital and Pan-Asia signed an Agency Agreement with Pan-
12 Asia through which A&J Capital agreed to provide Vinamex various services, including but not
13 limited: (a) to “manage and monitor the operation of the business, property, and affairs of [Vinamex]
14 in accordance with the Operating Agreement”; (b) to “monitor the disbursement of funds from
15 [Vinamex’s] bank accounts”; (c) to review and approve budgets; and (d) to “train and manage [Pan-
16 Asia’s] employees with regard to, and enforce, the rules and policies, as defined in the [Management]
17 Agreement.”

18 110. Vinamex has performed all of the conditions, covenants, and promises under the
19 Operating Agreement that it was required to perform, except for any parts that it was excused from
20 performing as a result of conduct of A&J Capital and Pan-Asia.

21 111. A&J Capital and Pan-Asia breached the Operating Agreement by, among other things,
22 engaging in the conduct set forth.

23 112. As a direct and proximate result of the actions of A&J Capital and Pan-Asia, Plaintiff
24 has been damaged in an amount that is uncertain but is alleged to exceed \$5,000,000 (excluding
25 interest).

26
27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages in an amount according to proof at trial but is alleged to exceed \$5,500,000;
2. For consequential and special damages in an amount according to proof at trial;
3. For punitive damages in an amount according to proof at trial;
4. For restitution, according to proof at trial;
5. For a constructive trust, according to proof at trial;
6. For avoidance of all transfers pursuant to 11 U.S.C. 544, 548 and 550, as well as California Civil Code Section 3439.01 and 3439.12;
7. For a judgment compelling turnover of property pursuant to 11 U.S.C. 542;
8. For interest on all awards in the maximum amount allowed by law;
9. For reasonable attorneys' fees if available by law;
10. For costs of suit herein; and
11. For such other and further relief as this Court may deem just and proper.

DATED: May 15, 2017

Respectfully submitted,
DCDM LAW GROUP, PC

By: /s/ Dheeraj K. Singhal
DHEERAJ SINGHAL
Attorneys for Plaintiff
ASSIGNEE OF VINAMEX SUPERMARKET
BANKRUPTCY CLAIMS LLC

JURY TRIAL DEMAND

Plaintiff requests a trial by jury of all issues that are triable to a jury in this case.

DATED: May 15, 2017

Respectfully submitted,
DCDM LAW GROUP, PC

By: /s/ Dheeraj K. Singhal
DHEERAJ K. SINGHAL
ROBERT M. GILCHREST
Attorneys for Plaintiff
ASSIGNEE OF VINAMEX SUPERMARKET
BANKRUPTCY CLAIMS LLC